

HOUSE BILL No. 2120

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-50-2.

Synopsis: Structured settlements and transfers. Establishes certain disclosure requirements for structured settlements concerning: (1) periodic payment of damages for personal injuries or sickness established by settlement or judgment to resolve a tort claim; or (2) periodic payments in settlement of a worker's compensation claim. Establishes numerous required procedures for the direct or indirect transfer of structured settlement payment rights.

Effective: July 1, 2001.

Ripley

January 17, 2001, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 2120

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-6-2-10.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2001]: **Sec. 10.3. "Annuity issuer", for purposes of this chapter**
4 **and IC 34-50-2, means an insurer that has issued an annuity**
5 **contract to be used to fund periodic payments under a structured**
6 **settlement.**

7 SECTION 2. IC 34-6-2-11.6 IS ADDED TO THE INDIANA CODE
8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2001]: **Sec. 11.6. "Assignee", for purposes of IC 34-50-2, means**
10 **a party that acquires structured settlement payment rights directly**
11 **or indirectly from a transferee of the rights.**

12 SECTION 3. IC 34-6-2-34.6 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2001]: **Sec. 34.6. "Discount/finance charge", for purposes of**
15 **IC 34-50-2, means the sum of:**

16 (1) **all charges payable directly or indirectly from an assigned**
17 **structured settlement payment and imposed directly or**



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indirectly by the transferee as an incident to a transfer of structured settlement payment rights, including:

- (A) interest charges;
- (B) discounts and other compensation for the time value of money;
- (C) all application, origination, processing, underwriting, closing, filing, and notary fees; and
- (D) all other similar charges; and

(2) all charges for commissions or brokerage regardless of the identity of the party to whom the charges are paid or payable. The term does not include any fee or other obligation incurred by a payee in obtaining independent professional advice concerning a transfer of structured settlement payment rights.

SECTION 4. IC 34-6-2-34.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 34.9. "Discounted present value", for purposes of IC 34-50-2, means, with respect to a proposed transfer of structured settlement payment rights, the fair present value of future payments, as determined by discounting the payments to the present using the most recently published applicable rate for determining the present value of an annuity issued by the United States Internal Revenue Service under Section 7520 of the Internal Revenue Code as the discount rate.

SECTION 5. IC 34-6-2-66.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 66.3. "Independent professional advice", for purposes of this chapter and IC 34-50-2, means advice of an attorney, a certified public accountant, an actuary, or other licensed professional adviser:

(1) who is engaged by a payee to render advice concerning the:

- (A) legal;
- (B) tax; and
- (C) financial;

implications of a transfer of structured settlement payment rights;

(2) who is not in any manner affiliated with or compensated by the transferee of the transfer; and

(3) whose compensation for providing the advice is not affected by whether a transfer does or does not occur.

SECTION 6. IC 34-6-2-71.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2001]: **Sec. 71.3. "Interested parties", for purposes of IC 34-50-2, means:**

- (1) the payee;
- (2) a beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death or, if the designated beneficiary is a minor, the designated beneficiary's parent or guardian;
- (3) the annuity issuer;
- (4) the structured settlement obligor; and
- (5) any other party that has continuing rights or obligations under the structured settlement.

SECTION 7. IC 34-6-2-98.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 98.3. "Payee", for purposes of this chapter and IC 34-50-2, means an individual who:**

- (1) is receiving tax free damage payments under a structured settlement; and
- (2) proposes to make a transfer of payment rights under the structured settlement.

SECTION 8. IC 34-6-2-126.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 126.9. "Qualified assignment agreement", for purposes of this chapter and IC 34-50-2, means an agreement providing for a qualified assignment as provided under Section 130 of the United States Internal Revenue Code.**

SECTION 9. IC 34-6-2-130.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 130.5. "Responsible administrative authority", for purposes of this chapter and IC 34-50-2, means a government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.**

SECTION 10. IC 34-6-2-137.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 137.3. "Settled claim", for purposes of this chapter and IC 34-50-2, means the original:**

- (1) tort; or
 - (2) worker's compensation;
- claim resolved by a structured settlement.**

SECTION 11. IC 34-6-2-142.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 142.3. "Structured settlement",**

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for purposes of this chapter and IC 34-50-2, means an arrangement for:

- (1) periodic payment of damages for personal injuries or sickness established by settlement or judgment to resolve a tort claim; or
- (2) periodic payments in settlement of a worker's compensation claim.

SECTION 12. IC 34-6-2-142.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 142.4. "Structured settlement agreement"**, for purposes of this chapter and IC 34-50-2, means the:

- (1) agreement;
- (2) judgment;
- (3) stipulation; or
- (4) release;

that includes the terms of a structured settlement, including the rights of the payee to receive periodic payments.

SECTION 13. IC 34-6-2-142.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 142.5. "Structured settlement obligor"**, for purposes of this chapter and IC 34-50-2, means the party that has the obligation to make continuing periodic payments to the payee under:

- (1) a structured settlement agreement; or
- (2) a qualified assignment agreement.

SECTION 14. IC 34-6-2-142.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 142.6. "Structured settlement payment rights"**, for purposes of this chapter and IC 34-50-2, means rights to receive periodic payments, including lump sum payments under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

- (1) the payee or any other interested party is domiciled in Indiana;
- (2) the structured settlement agreement was approved by a court or responsible administrative authority in Indiana; or
- (3) the settled claim was pending before an Indiana court when the parties entered into the structured settlement agreement.

SECTION 15. IC 34-6-2-142.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2001]: **Sec. 142.8. "Terms of the structured settlement", for purposes of IC 34-50-2, means the terms of:**

- (1) the structured settlement agreement;**
- (2) the annuity contract;**
- (3) a qualified assignment agreement; and**
- (4) an order or approval of:**
 - (A) a court;**
 - (B) a responsible administrative authority; or**
 - (C) another government authority;**

that authorizes or approves the structured settlement.

SECTION 16. IC 34-6-2-143.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 143.5. "Transfer", for purposes of this chapter and IC 34-50-2, means:**

- (1) a sale;**
- (2) an assignment;**
- (3) a pledge;**
- (4) a hypothecation; or**
- (5) another form of alienation or encumbrance made by a payee for consideration.**

SECTION 17. IC 34-6-2-143.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 143.6. "Transfer agreement", for purposes of IC 34-50-2, means the agreement that provides for transfer of structured settlement payment rights from a payee to a transferee.**

SECTION 18. IC 34-6-2-143.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 143.7. "Transferee", for purposes of this chapter and IC 34-50-2, means a person who is receiving or will receive structured settlement payment rights that result from a transfer.**

SECTION 19. IC 34-50-2 IS ADDED TO THE INDIANA CODE AS NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

Chapter 2. Structured Settlements; Transfer Protection

Sec. 1. When negotiating a structured settlement of claims brought by, or on behalf of, a claimant who is domiciled in Indiana, the structured settlement obligor shall disclose in writing to the claimant or the claimant's legal representative all of the following information that is not otherwise specified in the structured settlement agreement:

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(1) The amounts and due dates of the periodic payments to be made under the structured settlement agreement. If payments will be subject to periodic percentage increases, the amounts of future payments may be disclosed by identifying:

(A) the base payment amount;

(B) the amount and timing of scheduled increases; and

(C) the manner in which increases will be compounded.

(2) The amount of the premium payable to the annuity issuer.

(3) The discounted present value of all periodic payments that are not life contingent together with the discount rate used to determine the discounted present value.

(4) The nature and amount of any cost that may be deducted from any periodic payment.

(5) If applicable, that a transfer of the periodic payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law.

(6) That a transfer of the periodic payments by the claimant may subject the claimant to serious adverse tax consequences.

Sec. 2. A direct or indirect transfer of structured settlement payment rights is not effective and a structured settlement obligor or an annuity issuer is not required to make a payment directly or indirectly to a transferee of structured settlement payment rights unless all of the following conditions are met:

(1) The transfer has been authorized in advance in a final order of a court or responsible administrative authority and is based on the court's or responsible administrative authority's written findings that:

(A) the transfer:

(i) complies with the requirements of this chapter; and

(ii) will not contravene other applicable law; and

(B) at least ten (10) days before the date on which the payee first incurred an obligation with respect to the transfer, the transferee provided to the payee a disclosure statement, in at least 14 point bold type, that specifies:

(i) the amounts and due dates of the structured settlement payments to be transferred;

(ii) the aggregate amount of the payments;

(iii) the discounted present value of the payments together with the discount rate used in determining the discounted present value;

(iv) the gross amount payable to the payee in exchange for the payments;

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(v) an itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, referral fees, administrative fees, legal fees, notary fees, and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee; (vi) the net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in item (v);

(vii) the quotient, expressed as a percentage, obtained by dividing the net payment amount by the discounted present value of the payments, which must be disclosed in the following statement: "The net amount that you will receive from us in exchange for your future structured settlement payments represents ___% of the estimated current value of the payments.";

(viii) the effective annual interest rate that is disclosed in the following statement: "Based on the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are turning over to us, you will, in effect, be paying interest to us at a rate of ___% per year."; and

(ix) the amount of any penalty and the aggregate amount of any liquidated damages, including penalties, payable by the payee in the event of a breach of the transfer agreement by the payee.

(2) The payee has established that the transfer is in the best interests of the payee and the payee's:

(A) spouse and minor children; and

(B) other family members and other persons for whom the payee is legally obligated to provide support, including spousal maintenance.

(3) The payee has received or waived the payee's right to receive independent professional advice regarding the:

(A) legal;

(B) tax; and

(C) financial;

implications of the transfer.

(4) The transferee has:

(A) given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor; and

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(B) has filed a copy of the notice with the court or responsible administrative authority.

(5) The transfer agreement provides that:

(A) if the payee is domiciled in Indiana, any disputes between the parties will be governed, interpreted, construed, and enforced under Indiana law; and

(B) the domicile state of the payee is the proper place of venue to bring any cause of action arising out of a breach of the agreement.

(6) The court or responsible administrative agency has made a determination that the net amount payable to the payee is fair, just, and reasonable under the circumstances then existing.

(7) The transfer agreement provides that the parties agree to the jurisdiction of any court with jurisdiction in Indiana.

Sec. 3. (a) If a transfer would contravene the terms of a structured settlement, upon the filing of a written objection by an interested party and after considering the objection and any response to it, the court or responsible administrative authority may:

(1) grant;

(2) deny; or

(3) impose conditions upon;

the proposed transfer as the court or responsible administrative authority considers just and proper under the facts and circumstances in accordance with established principles of law.

(b) An order that approves a transfer must require the transferee to indemnify the annuity issuer and the structured settlement obligor for any liability, including reasonable costs and attorney's fees arising from compliance by the issuer or obligor with the order of the court or responsible administrative authority.

Sec. 4. A provision in a transfer agreement that gives a transferee power to confess judgment against a payee is unenforceable to the extent the amount of the judgment would exceed the amount paid by the transferee to the payee, less any payments received from the structured settlement obligor or the payee.

Sec. 5. (a) A circuit court has nonexclusive jurisdiction over an application for authorization of a transfer of structured settlement payment rights.

(b) At least twenty (20) days before the scheduled hearing on an application for authorization of a transfer of structured settlement



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1 payment rights under sections 1 through 4 of this chapter, the
 2 transferee shall file a notice of the proposed transfer and the
 3 application for its authorization with the court or responsible
 4 administrative authority, any other government authority that
 5 previously approved the structured settlement, and all interested
 6 parties. The notice must include all of the following:

7 (1) A copy of the transferee's application to the court or
 8 responsible administrative authority.

9 (2) A copy of the transfer agreement.

10 (3) A copy of the disclosure statement required under section
 11 2 of this chapter.

12 (4) Notification that an interested party is entitled to support,
 13 oppose, or otherwise respond to the transferee's application,
 14 either in person or by counsel, by:

15 (A) submitting written comments to the court or
 16 responsible administrative authority; or

17 (B) participating in the hearing.

18 (5) Notification of the time and place of the hearing and
 19 notification of the manner in which and the time by which
 20 written responses to the application must be filed, in order to
 21 be considered by the court or responsible administrative
 22 authority. Written responses to the application must be filed
 23 not more than fifteen (15) days after service of the
 24 transferee's notice.

25 Sec. 6. The provisions of sections 1 through 5 of this chapter
 26 may not be waived.

27 Sec. 7. A payee who proposes to make a transfer of structured
 28 settlement payment rights may not:

29 (1) incur a penalty;

30 (2) forfeit an application fee or other payment; or

31 (3) otherwise incur any liability to the proposed transferee;
 32 based on the failure of the transfer to satisfy the conditions of
 33 sections 1 through 4 of this chapter.

34 Sec. 8. (a) If, in connection with a transfer of structured
 35 settlement payment rights, a transferee has violated a
 36 discount/finance charge stipulation, neither the transferee nor any
 37 assignee may collect from the transferred payments, or from the
 38 payee, any amount that exceeds the net advance amount. The payee
 39 may recover from the transferee or any assignee:

40 (1) a refund of any excess amounts previously received by the
 41 transferee or any assignee;

42 (2) a penalty in an amount determined by the court that does

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not exceed three (3) times the aggregate amount of the discount/finance charge; and

(3) reasonable costs and attorney's fees.

(b) If, in connection with a transfer of structured settlement payments rights, the transferee has violated the disclosure requirements in section 2 of this chapter, the transferee and any assignees are liable to the payee for:

(1) a penalty in an amount determined by the court that does not exceed three (3) times the amount of the discount/finance charge; and

(2) reasonable costs and attorney's fees.

Sec. 9. A transferee or assignee is not liable for any penalty in any action brought under this chapter if the transferee or assignee establishes by a preponderance of evidence that the violation:

(1) was not intentional; and

(2) notwithstanding the transferee's maintenance of procedures reasonably designed to avoid errors, resulted from a bona fide error.

Sec. 10. An action may not be brought under this chapter for a violation of:

(1) a discount/finance charge stipulation more than one (1) year after the due date of the last transferred structured settlement payment; and

(2) the disclosure requirements of section 2 of this chapter more than one (1) year after the due date of the first transferred structured settlement payment.

Sec. 11. If the attorney general believes that a transferee has violated sections 1 through 4 of this chapter, the attorney general may bring a civil action for:

(1) injunctive relief; and

(2) other penalties and relief appropriate to secure compliance with this chapter.

Sec. 12. This chapter does not:

(1) authorize a transfer of workers' compensation payment rights in contravention of applicable law; or

(2) give effect to a transfer of worker's compensation or other payment rights that is not valid under applicable law.

SECTION 20. [EFFECTIVE JULY 1, 2001] IC 34-50-2, as added by this act, does not apply to structured settlement transfers that occur before July 1, 2001.

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